

City Contests Role for Morgenthau in Fire Dept. Case

By A. G. SULZBERGER

Citing “a public and well-reported dispute” between Robert M. Morgenthau and Mayor Michael R. Bloomberg, the city asked a federal judge on Friday to reconsider the appointment of Mr. Morgenthau to oversee the city’s efforts to increase the number of black and Hispanic firefighters in response to a long-running discrimination lawsuit.

The request came two days after the judge, Nicholas G. Garaufis, of United States District Court in Brooklyn, made the surprise appointment of Mr. Morgenthau as a special master just six months after his 35-year tenure as Manhattan district attorney ended.

“Given Mr. Morgenthau’s prior pronouncements concerning the mayor, as well as the conflict between Mr. Morgenthau and the city’s chief legal officer and his efforts to criminally charge the city and current high-ranking members of the Fire Department, a reasonable person, knowing all the facts, would conclude that Mr. Morgenthau’s impartiality could be questioned,” the city wrote in a letter to the court. It was signed by Georgia Pestana, the chief of labor and employment law for the city.

The city attached copies of newspaper articles about the conflict, highlighting disparaging comments that it said “suggest Mr. Morgenthau considers the mayor as egomaniacal.” In addition, the city said it would file a declaration by its corporation counsel, Michael A. Cardozo, describing other comments Mr. Morgenthau had made about the mayor and the city’s law office “that further reflect the tensions.”

Judge Garaufis declined the city’s request for a hearing on the matter and asked the city to submit a formal motion for disqualification.

“Under the circumstances outlined in our letter, we think it

would be inappropriate for Mr. Morgenthau to serve as the special master,” Kate O’Brien Ahlers, a law department spokeswoman, said in a statement. (The city noted in its letter that “Mr. Morgenthau has had a long and unquestionably distinguished career as one of the great prosecutors of this country.”)

Mr. Morgenthau, who now works at the law firm Wachtell, Lipton, Rosen & Katz, responded forcefully, saying: “I was asked by the judge to assist by helping the parties meet his ordered relief. My record and independence in my role as district attorney are no secret, and I wouldn’t have accepted the position if I didn’t think I could be impartial. Nonetheless, of course I will do what is in the best interest of moving this important matter forward.”

The Justice Department, which brought the lawsuit against the city after a federal complaint by an organization of black firefighters, the Vulcan Society, declined to comment.

“I don’t know whether this is a legitimate concern because there have been some differences with Morgenthau or if it’s just another attempt to slow down the process,” said Richard A. Levy, a lawyer for the Vulcan Society.

“It strikes me that he’s a person of integrity,” Mr. Levy added. “He may have had a dispute with someone in the administration, but that doesn’t mean he can’t answer questions about how to get a process moving to develop a new firefighter test.”

In January, Judge Garaufis found that the city knew that the entrance exam it used from 1999 to 2002 was disproportionately weeding out black and Hispanic applicants, who represented less than 10 percent of the Fire Department. He ordered the city to give 300 of those applicants priority hiring status and retroactive seniority, and to financially compensate 7,400 more who had taken the test. He called the problem

“a persistent stain on the Fire Department’s record.”

Since then, Judge Garaufis has expressed growing frustration with the city’s handling of the case, threatening sanctions before settling on enlisting a special master to oversee the reforms.

Though the judge did not note Mr. Morgenthau’s recent history of conflict with city leaders in his order announcing the appointment, the move was widely seen as an effort to enlist someone with the stature to force the city to make changes in hiring.

“I can’t imagine that the judge didn’t know about all these articles when he vetted Mr. Morgenthau,” said Darius Charney of the Center for Constitutional Rights, one of the lawyers for the plaintiffs. “Personally, I don’t think it’s a conflict of interest.”

The central issue in the dispute between Mr. Morgenthau and Mr. Bloomberg appears to be an escalating conflict that began with a disagreement over how money the district attorney’s office obtained in a major financial settlement would be divided between the city and the state. That grew into a dispute over secret bank accounts that burst into public view last winter.

The letter from the city said that United States Code required the disqualification of a special master “in any proceeding in which his impartiality might reasonably be questioned.”

“With this history,” the letter stated, “even if Mr. Morgenthau is not in fact biased against the city and other defendants, the immediate media reports concerning his appointment make evident that a perception of bias exists in the general population.”

Raising questions of impartiality and citing ‘tensions’ with the mayor.

